

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

WHITMAN'S CANDIES, INC.,)
)
Plaintiff,)
)
v.) Case No. 05-1144-CV-W-HFS
)
MAXFIELD CANDY CO.,)
)
Defendant.)

MEMORANDUM TO COUNSEL

Perhaps a reply brief will deal with this, but I am currently interested in whether there may be an unfair competition claim against Maxfield and/or Wal-Mart, based on (1) failure to identify the Maxfield product by name, except on the reverse side, not seen by customers, (2) placing it close to the Whitman's product, and (3) using a form of presentation that somewhat resembles the style of the Sampler label. Whether federal law is implicated in that context is a question probably not covered by current briefing.

Another example would be if books were identified as "Star Books" (perhaps a generic name) and were placed near books produced by the Kansas City Star.

It may be prudent for one or both parties to call this issue to the attention of Wal-Mart.

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

December 7, 2005

Kansas City, Missouri